



DEPARTMENT OF THE AIR FORCE
WASHINGTON, DC

JUN 30 1998

Office of the Assistant Secretary

AFBCMR 98-00024

MEMORANDUM FOR THE CHIEF OF STAFF

Under the authority of Section 1552, Title 10, United States Code, Air Force Instruction 36-2603, and having assured compliance with the provisions of the above regulation, the decision of the Air Force Board for Correction of Military Records is announced, and it is directed that:

The pertinent military records of the Department of the Air Force relating to [REDACTED] be corrected to show that on 31 December 1972, he elected spouse Survivor Benefit Plan annuity coverage based on full retired pay.

A handwritten signature in cursive script that reads "Raymond H. Weller".

RAYMOND H. WELLER
Chief Examiner
Air Force Board for Correction
of Military Records



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MEMORANDUM OF CONSIDERATION OF APPLICATION BEFORE THE AFBCMR

JB [REDACTED]

Having carefully reviewed this application, we agree with the recommendation of the Air Force and adopt the rationale expressed as the basis for our decision that the applicant has been the victim of either an error or an injustice. Therefore, under the authority delegated in AFI 36-2603, the applicant's records will be corrected as set forth in the accompanying Memorandum for the Chief of Staff signed by the Executive Director of the Board or his designee.

Wayne R. Gracie

Panel Chair

Attachment:
Ltr, HQ AFPC/DPPT, dtd 28 May 1998



DEPARTMENT OF THE AIR FORCE
HEADQUARTERS AIR FORCE PERSONNEL CENTER
RANDOLPH AIR FORCE BASE TEXAS

MEMORANDUM FOR AFBCMR

28 MAY 1998

FROM: HQ AFPC/DPPTR
550 C Street West Ste 11
Randolph AFB TX 78150-4713

SUBJECT: Application for Correction of Military Records

Requested Correction: The applicant, widow of the above-named retired member, is requesting corrective action that would entitle her to a Survivor Benefit Plan (SBP) annuity.

Basis for Request: The applicant swears, under penalty of perjury, that she was not notified of her husband's SBP decision.

Background: Public Law (PL) 92-425, which established the SBP, required the spouse to be notified when a member declined or elected less than maximum spouse coverage.

Facts: Defense Finance and Accounting Service (DFAS) records indicate that the member declined participation in the SBP prior to his 1 Jan 73 retirement. The member's election form has not been located and there is no evidence that the required notice was or was not sent to the applicant. The member died on 24 Apr 96.

Discussion: The U. S. Court of Claims has consistently ruled that widows who are not given notice of their sponsor's election are entitled to full SBP coverage—Barber v. U.S., 676 F.2d 651 (Cl. Ct. 1982; Dean v. U.S., 10 Cl. Ct. 563 (1986); and Kelly v. U.S., 826 F.2d 1049 (Fed Cir. 1987). This case is essentially identical and the claimant has provided a notarized statement attesting to the fact that she never received any notice of her husband's election, nor is there a record that such notice was sent to her.

Recommendation: We recommend the decedent's records be corrected to show on 31 Dec 72 he elected spouse SBP coverage based on full retired pay. Approval should be contingent upon recovery of premiums the decedent would have paid had he made the election at that time.

Pat Peek

PAT PEEK, DAFC
Chief, Retiree Services Branch
Directorate of Pers Program Management

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